

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 327 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?

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SURAT MUNICIPAL EMPLOYEES' (STAFF) UNION

Versus

SURAT MUNICIPAL CORPN.

Appearance:

MR PB MAJMUDAR for Petitioner

MR SATYAJIT SEN FOR MR PRASHANT G DESAI for
Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 03/02/99

ORAL JUDGEMENT

This petition has been filed by Surat Municipal Employees' (staff) union against Surat Municipal Corporation for quashing the action of the respondent Corporation of giving appointments out of turn to the persons by breaking serial number from the Select List/Waiting List and not giving appointments as per serial number in the Select Lists/Waiting Lists for the

post of (i) Third Grade Clerk, (ii) Sanitary Sub-Inspector and (iii) Supervisor and for a direction to respondent to continue the select lists/waiting lists of all the six categories, viz. (i) Third Grade Clerk, (ii) Sanitary Sub-Inspector, (iii) Overseer, (iv) Fero Printer, (v) Supervisor and (vi) Inspector of Fitter Trade, till the select lists/waiting lists prepared for the said posts are completely exhausted by making appointments from the concerned select list/waiting list and also to cancel all the appointments made out of turn to the persons who were lower down in the select lists/waiting lists and to give appointments to the candidates serialwise. i.e. (i) from Sr. No. 519 onwards for the post of Third Grade Clerk, (ii) from Sr. No. 78 onwards for the post of Sanitary Sub-Inspector and (iii) from Sr. No. 42 for the post of Supervisor and for filling up the vacancies in the various departments of the Corporation viz. (i) Third Grade Clerk, (ii) Sanitary Sub-Inspector, (iii) Overseer (iv) Fero Printer, (v) Supervisor and (vi) Inspector of Fitter Trade. The Corporation has prepared the select lists/waiting lists for the purpose of appointments to the posts aforesaid. That list was valid upto 27-3-1990 and that list was in operation on the date of filing of the petition. The Corporation has made appointments from the said list starting from Sr. No. 1 and serialwise upto no. 518 and the appointments have already been made. But when the question of appointment of the candidate at Sr. 519 in the said list was due, the Corporation did not proceed further as per the serial number of the Select List/Waiting List and subsequently appointments were made by breaking the serial number of the list. The candidates at Sr. 520, 522, 524, 532, 536, 545, 552, 558, 570, 571, 575, 577, 581, 582, 601 and 618 have not been appointed serialwise. The appointments have to be made as per serial number in the list. At the time of preparation of the select list/waiting list the proper percentage of SC and ST and other reserved categories was taken into consideration when this list was prepared and the persons have been given appointments out of turn under the guise of back log, that is illegal and arbitrary. Once the select lists/waiting lists were prepared after taking proper care and giving due consideration of the vacancies for the reserved categories viz.. SC, ST and others are required to be strictly operated as per serial no. in the list. There is no resolution which entitles the Corporation to break serial number of the list and to give appointment by picking and choosing persons from the lower down in the list for giving the appointments. The action of the Corporation was without authority, arbitrary and illegal.

The Corporation is an autonomous body and it is not receiving any grant from the Government and all the Government Resolutions regarding roster are not applicable to the Corporation. If there is any Government Resolution or Circular in respect of roster system it is not binding on the Corporation. The employees made a representation in that respect. The petitioners were informed by the letter dated 24-7-1989 by the Assistant Commissioner that the appointments of the candidates were required to be made as per serial number given in the list and no appointment will be made contrary to serial no. in the list.

2. An affidavit-in-reply has been filed on behalf of the Corporation, wherein it has been stated that Corporation has prepared the Select List/Waiting List for the appointment of Third Grade Clerks comprising of 929 candidates which was valid up to 27-3-990. The appointments were made serialwise from Sr.No. 1 to 580. The Corporation is also bound to follow the roster policy and that is compulsory for the Corporation to follow the instructions with respect to the roster from time to time issued by the State Government. There was recruitment drive from the State Government to fill up and clear the backlog of SC and ST candidates. The Government has also passed the resolution dated 5-7-89 and there was ban on the appointments of any candidates of general category on the post which has been carried forward or kept vacant for SC and ST candidates on or before 1-4-89. There was backlog of 17 posts of ST and according to the resolution of the State Government it was obligatory on the part of the Corporation to fill up those posts from the ST candidates only. A representation was made by the interested ST persons to the State Government that the Corporation has not given any appointment to the ST candidates according to the norms and therefore the Social Welfare Department of the State Government sent a letter dated 19-1-89 to the Corporation wherein it was directed that the respondent - Corporation should make appointments according to roster and if in the merit list any reserved candidate is not available according to the roster, they should be brought above in the list and those candidates should be appointed. The Corporation has sent the letter dated 30-1-89 to the Department stating therein that they are getting difficulties in implementing the said instructions and requested for review of the same. In reply to that letter, the Deputy Secretary, Social Welfare Department of the State Government sent a letter dated 6-11-89 that there was no scope for review and the respondent - Corporation should proceed with the appointments according to the

instructions and guidelines contained in the letter dated 19-1-89. 77 candidates were appointed for the post of Sanitary Sub-Inspector up to 2-6-89. Thereafter, the Corporation received the resolution dated 5-7-89 and directed the backlog of the SC and ST candidates should be filled up first and to complete the backlog of the said category and there was backlog of 26 candidates and therefore according to the instructions given vide letter dated 5-7-89 the appointments were given to the candidates of Sr. 92 and 117. In the similar manner the Corporation has also followed the Government resolutions and instructions to make backlog of SC and ST clear in appointing the persons.

3. Heard learned counsel Mr. P.B. Majmudar for the petitioner and Mr. Satyajit Sen with learned Mr. P.G. Desai for the respondent and perused the relevant papers.

4. Learned counsel Mr. Desai raised a preliminary objection first of all that the petition is not maintainable in view of the fact that the affected parties have not been impleaded in the petition. It is not clear from the assertions made in the petition that on behalf whose and which of the aggrieved party the petition has been filed. No the persons who have already been appointed, have been impleaded in the petition and without hearing the affected parties, the appointments cannot be assailed. Secondly, the learned Counsel for the Corporation contended that the roster policy according to which the appointments have been made has not been challenged and that roster policy was being implemented from 1982 and that has also been implemented in 1990. The assertions made in the counter affidavit have remained uncontroverted as the rejoinder affidavit has not been filed by the petitioner.

5. I have carefully considered the submissions of the learned counsel for the parties. This petition has been filed by the union of the employees of the respondent Surat Municipal Corporation. But the assertions made in the petition do not show that this petition has been filed on behalf of which of the aggrieved persons nor any name of the aggrieved person has been mentioned in the petition. The allegations made in the petition are too vague and hence they cannot be accepted. Secondly, the persons who have already been appointed out of turn have not been made parties in the petition and they have not been given any opportunity of being heard. As stated above, this petition cannot be sustained at all. From the assertions made in the counter affidavit it appears that on the basis of the

Government Resolutions the Corporation has followed the roster policy and made certain appointments to make the backlog of vacancies clear. Even according to the allegations of the parties, the select list/waiting list was followed up to 27-3-1990 and this Court has not passed any interim order to make them alive. On the basis of the select list/waiting list no appointments can be made at this time after about 9 years. The Corporation does not appear to have committed any error in implementing the roster system and clearing up the backlog vacancies of the reserved categories.

6. In the facts and circumstances, this petition has no merit and accordingly this petition is dismissed. Rule is discharged with no order as to costs. Interim order, if any, stands vacated.

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/JVSatwara/